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Attorneys for Defendants
CITY OF SAN RAMON

**UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PHANTOM LS RECORDS, LLC, and
SUMANTE J HUTCHINSON,

Plaintiff,

vs.

STATE OF CALIFORNIA
UNVERSTY OF SANTA CRUZ,
KAISER PERMANENTE, CITY OF
SAN RAMON, REDWOOD CITY,
SAN MATEO,

Defendants.

Case No. 3:21-cv-05787-EMC

**DEFENDANT CITY OF SAN
RAMON ANSWER TO
PLAINTIFFS' AMENDED
COMPLAINT**

Complaint filed: April 28, 2021

Trial date: Not applicable

COMES NOW Defendant, CITY OF SAN RAMON in answer to Plaintiffs
PHANTOM LS RECORDS, LLC, and SUMANTE J HUTCHINSON'S Amended
Complaint for damages hereby admit, deny, and allege as follows:

JURISDICTION AND VENUE

San Ramon admits that this court has jurisdiction to hear plaintiff's claims.

1 San Ramon further admits that venue is proper. San Ramon denies that any unlawful
2 acts or practices occurred. As to all other allegations, San Ramon lacks sufficient
3 information and belief upon which to base an answer, and, for that reason, denies
4 generally and specifically the other allegations contained therein.

5 **FACTS**

6 Answering the STATEMENT OF FACTS of the First Amended Complaint,
7 San Ramon lacks sufficient information and belief upon which to base an answer,
8 and for that reason, denies generally and specifically the allegations contained
9 therein.

10 **SECOND CAUSE OF ACTION**

11 Answering the SECOND CAUSE OF ACTION of the First Amended
12 Complaint, San Ramon lacks sufficient information and belief upon which to base
13 an answer, and for that reason, denies generally and specifically the allegations
14 contained therein.

15 **AFFIRMATIVE DEFENSES**

16 AS A FIRST AFFIRMATIVE DEFENSE to the Complaint, and each alleged
17 cause of action thereof, this answering Defendant allege that said Complaint fails to
18 state a claim upon which relief can be granted.

19 AS A SECOND AFFIRMATIVE DEFENSE to the Complaint, and each
20 alleged cause of action thereof, this answering Defendant allege that the injuries and
21 damages Plaintiff complains of, if any, resulted from the acts and/or omissions of
22 others, and without any fault on the part of this answering Defendant.

23 AS A THIRD AFFIRMATIVE DEFENSE to the Complaint, and each alleged
24 cause of action thereof, this answering Defendant alleges that its actions taken were
25 undertaken in good faith and with the reasonable belief that said actions were valid,
26 necessary and constitutionally proper.

27 AS A FOURTH AFFIRMATIVE DEFENSE to the Complaint, and each
28 alleged cause of action thereof, this answering Defendant allege that its acts were

1 privileged under applicable statutes and case law.

2 AS A FIFTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged
3 cause of action thereof, this answering Defendant alleges that plaintiff has failed to
4 allege and/or has not stated facts sufficient to show an affirmative link between
5 defendant and the acts which allegedly violated Plaintiff's rights.

6 AS A SIXTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged
7 cause of action thereof, this answering Defendant alleges that Plaintiff failed to
8 mitigate his damages, if any.

9 AS A SEVENTH AFFIRMATIVE DEFENSE to the Complaint, and each
10 alleged cause of action thereof, this answering Defendant alleges that plaintiff's
11 Complaint is barred by the applicable Statute of Limitations.

12 AS AN EIGHTH AFFIRMATIVE DEFENSE to the Complaint, and each
13 alleged cause of action thereof, this answering Defendant alleges that the Complaint
14 is barred by the equitable doctrine of laches.

15 AS A NINTH AFFIRMATIVE DEFENSE to the Complaint, and each alleged
16 cause of action thereof, this answering Defendant alleges that the Complaint is
17 barred by the equitable doctrine of unclean hands.

18 AS A TENTH AFFIRMATIVE DEFENSE to the Complaint, and each
19 alleged cause of action thereof, this answering Defendant alleges that the Complaint
20 is barred by the equitable doctrine of estoppel.

21 AS AN ELEVENTH AFFIRMATIVE DEFENSE to the Complaint, and each
22 alleged cause of action thereof, this answering Defendant alleges that plaintiff has
23 waived his rights to bring this action against them.

24 AS A TWELFTH AFFIRMATIVE DEFENSE to the Complaint, and each
25 alleged cause of action thereof, this answering Defendant alleges that Plaintiff at all
26 times had actual and/or constructive knowledge of the circumstances upon which
27 plaintiff's Complaint is based. Plaintiff expressly accepted those circumstances and
28 thereby ratified the conduct of which Plaintiff complains.

1 AS A THIRTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each
2 alleged cause of action thereof, this answering Defendant alleges that the
3 Complained of conduct is privileged under California Civil Code §47 and applicable
4 case law.

5 AS A FOURTEENTH AFFIRMATIVE DEFENSE to the Complaint, and
6 each alleged cause of action thereof, this answering Defendant alleges that any
7 damages sustained by plaintiff were either fully or in part the fault of others,
8 whether that fault be the proximate result of negligence, strict liability, breach of
9 warranty, breach of contract, or any other type of fault caused by persons, firms,
10 corporations or entities, other than this answering Defendant, and that said
11 negligence or fault comparatively reduces the percentage of fault or negligence, if
12 any, by this answering Defendant.

13 AS A FIFTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each
14 alleged cause of action thereof, this answering Defendant alleges that plaintiff was
15 himself careless and negligent in and about the matters alleged in the Complaint and
16 that said carelessness and negligence on plaintiff's own part proximately contributed
17 to plaintiff's loss and damage, if any there were. Under the doctrine of *Li v. Yellow*
18 *Cab* (1975) 532 P.2d 1226, 119 Cal.Rptr. 858, plaintiff's contributory negligence
19 shall reduce any and all damages sustained by said plaintiffs.

20 AS A SIXTEENTH AFFIRMATIVE DEFENSE to the Complaint, and each
21 alleged cause of action thereof, this answering Defendant alleges that plaintiff was
22 actively negligent in and about the matters alleged in the Complaint and are thereby
23 barred from any recovery.

24 AS A SEVENTEENTH AFFIRMATIVE DEFENSE to the Complaint, and
25 each alleged cause of action thereof, this answering Defendant is informed and
26 believes and thereon alleges that plaintiff, with full appreciation of the particular
27 risks involved, nevertheless knowingly and voluntarily assumed the risks and
28 hazards of the incident complained of and the damages, if any, resulting therefrom.

1 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE to the Complaint,
2 Defendant is informed and believe and thereon allege that Defendants are immune,
3 and its conduct privileged under California Government Code §800 et. seq.,
4 including, but not limited to Sections 815, 820.2, 820.4, 820.6 and 844.6.

5 AS A NINETEENTH AFFIRMATIVE DEFENSE to the Complaint,
6 Defendant is informed and believe and thereon allege that Defendant's conduct was
7 not motivated by evil motive or intent, nor reckless or callous indifference to the
8 rights of others, thus punitive damages are not awardable against Defendants.

9 AS A TWENTIETH AFFIRMATIVE DEFENSE to the Complaint,
10 Defendants is informed and believes and thereon alleges that Defendant is entitled to
11 a qualified immunity because Defendant did not violate clearly established statutory
12 or constitutional rights of which a reasonable person would have been aware.

13 AS A TWENTY-FIRST AFFIRMATIVE DEFENSE to the Complaint,
14 Defendant is informed and believe and thereon allege that Defendant CITY OF SAN
15 RAMON, a public entity, did not commit a constitutional violation against plaintiff,
16 caused by a policy, custom, or practice.

17 AS A TWENTY-SECOND AFFIRMATIVE DEFENSE to the Complaint,
18 Defendant is informed and believes and thereon alleges that Defendant's employees
19 are not liable for any alleged injuries sustained by plaintiff, as his alleged acts or
20 omissions were committed in the execution or enforcement of the law, while
21 exercising due care. (California Government Code §820.4)

22 AS A TWENTY-THIRD AFFIRMATIVE DEFENSE to the Complaint,
23 Defendant is informed and believes and thereon alleges that plaintiff failed to
24 exhaust his administrative remedies including, but not limited to, those pursuant to
25 Government Code §900 through §935, et seq.

26 AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE
27 TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION
28 THEREOF this answering Defendant alleges that plaintiff failed to file a claim

1 pursuant to the California Tort Claims Act.

2 AS A TWENTY FIFTH AFFIRMATIVE DEFENSE, Defendant is informed
3 and believes and thereon alleges that plaintiff's claims are barred by the applicable
4 statute of limitations.

5 AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE to the Complaint,
6 Defendant is informed and believes and thereon alleges that Defendant CITY OF
7 SAN RAMON, which is a public entity, did not commit a constitutional violation
8 against Plaintiff caused by a policy, custom, or practice.

9 AS A TWENTY-SEVENTH AFFIRMATIVE DEFENSE, Defendant alleges
10 that the actions undertaken by the officers were objectively reasonable given the
11 totality of the circumstances.

12 AS A TWENTY-EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE
13 TO THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION
14 THEREOF this answering Defendant alleges that no actions or omissions by
15 Defendant were the result of retaliatory intent.

16 AS A TWENTY-NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO
17 THE COMPLAINT, AND EACH ALLEGED CAUSE OF ACTION THEREOF
18 this answering Defendant alleges that the individual Defendant, CITY OF SAN
19 RAMON, its employees or agents, pursuant to Government Code Section 815.2, are
20 entitled to immunity from the Plaintiff by virtue of the provisions of the
21 Government Code of the State of California, Sections 800 through 1000, including
22 but not limited to Section 820.2, 820.4, 820.6, 820.8, 821, 821.6, 822.2, 830 et seq.,
23 830.4, 830.8 and 845.8.

24 WHEREFORE, this answering Defendant prays that Plaintiff take nothing by
25 way of his unverified Complaint, that Defendant has judgment for costs of suit
26 incurred, herein, together with such other and further relief as the court may deem just
27 and proper.

1 Defendant CITY OF SAN RAMON demands a jury trial.
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5 Dated: April 12, 2022

CLAPP, MORONEY, VUCINICH,
BEEMAN and SCHELEY

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7
8 By: 

9 JEFFREY M. VUCINICH, ESQ.
10 SHERRETT O. WALKER, ESQ.
11 Attorneys for Defendant
12 CITY OF SAN RAMON
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